

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SAVE THE MEEKER-DAVIS GARRY
OAK,

Plaintiff,

v.

DEBBIE SULLIVAN,

Defendant.

CASE NO. 3:24-cv-05428-BHS

ORDER

THIS MATTER is before the Court on plaintiff Save the Meeker-Davis Garry Oak's notice of removal, Dkt. 1, and its motion for a temporary restraining order, Dkt. 2.

Plaintiff is a self-described local citizen action group. Dkt. 1-2 at 2. Defendant Sullivan is the Mayor of Tumwater. Plaintiff asserts that Sullivan seeks to remove an historic, 400-year-old Garry Oak near the Olympia airport, perhaps to facilitate the expansion of that airport, but in any event based on a "flawed" arborist report concluding that the tree is hazardous. Plaintiff asserts that the tree is home to nesting kestrels, and that removing the tree would violate the federal Migratory Bird Treaty Act (MBTA). Dkt. 1-2 at 4.

1 On May 24, 2024, plaintiff sued to stop the removal in Thurston County Superior
2 Court. It contends obtained a Temporary Restraining Order there, and that on May 31, the
3 superior Court granted Sullivan’s motion to dissolve that TRO. It asserts that the superior
4 court extended the TRO until 5:00 p.m. June 5, so that plaintiff could file an emergency
5 appeal. Dkt. 1 a 3–4 (citing Dkt. 1 at 37 (Ex. G) and 38–60 (Ex. H)).

6 On June 4, plaintiff “removed” its action to this Court, citing 28 U.S.C. § 1332
7 (diversity jurisdiction). From the context, it is readily apparent that plaintiff meant to
8 remove instead under § 1331 (federal question jurisdiction); its complaint does assert a
9 federal question and the parties are all citizens of Washington. But that is not the problem
10 with the removal.

11 28 U.S.C. §1441(a) provides a mechanism for a “*defendant*” to remove an action
12 to the appropriate federal district court. There is no mechanism for a plaintiff to remove a
13 case it filed elsewhere to this Court. *See ASAP Copy and Print v. Canon Business*
14 *Solutions Inc.*, 643 Fed. App’x 650, 652 (9th Cir. 2016) (citing *Shamrock Oil& Gas*
15 *Corp. v. Sheets* 313 U.S. 100, 104–05 (1941)).

16 It is perhaps true that plaintiff could have filed its complaint in this Court. But its
17 removal of the state court case under 28 U.S.C. §§ 1441 and 1446 is not effective, and it
18 does not invoke this Court’s jurisdiction.

19 Because the plaintiff’s effort to invoke the Court’s subject matter jurisdiction by
20 removing the case it commenced in state court is deficient, the matter is *sua sponte*
21 **REMANDED** to Thurston County Superior Court. Plaintiff’s motion for a Temporary
22

1 Restraining Order is **DENIED** without prejudice. The clerk shall promptly inform the
2 state court of this order, and close the case.

3 **IT IS SO ORDERED.**

4 Dated this 4th day of June, 2024.

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7 BENJAMIN H. SETTLE
United States District Judge
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